

(Adopted June 28, 1990)(Amended May 3, 1991)(Amended December 7, 1995)
(Amended April 20, 2001)(Amended November 9, 2001)(Amended May 3,
2002)(Amended July 13, 2007, Replacing September 8, 2006 Version)

PROPOSED AMENDED RULE 1309.1 - PRIORITY RESERVE

(a) Priority Reserve

A Priority Reserve is established to provide credits for specific priority sources. The funding of the Priority Reserve shall be made quarterly on March 31, June 30, September 30, and December 31 or other schedule deemed practicable by the Executive Officer or designee. The amount of this allocation shall not exceed the following amounts:

<u>Air Contaminant</u>	<u>Quarterly Allocation (lbs per day)</u>
Reactive Organic Gases (ROG)	500
Nitrogen Oxides (NOx)	250
Sulfur Dioxide (SOx)	60
Particulate Matter (PM10)	125
Carbon Monoxide (CO)	250

Notwithstanding the above, the Executive Officer shall transfer on a one-time basis by January 1, 2002, the following to the Priority Reserve for use exclusively by Electric Generating Facilities, and return any unused portion of this allocation as of December 31, 2003, to the District's NSR account.

Sulfur Dioxide (SOx)	750 lbs/day
Carbon Monoxide (CO)	6,000 lbs/day

(b) Specific Priority Sources

The following priority sources will be qualified to draw from a pool of credits established every quarter.

(1) Innovative Technology

Is innovative equipment or a process which:

- (A) the applicant demonstrates will result in a significantly lower emission rate from the affected source than would have occurred with the use of BACT; and
 - (B) can be expected to serve as a model for emission reduction technology.
- (2) Research Operations
Is an experimental research operation for which:
 - (A) the purpose of the operation is to permit investigation, experiment or research to advance the state of knowledge or the state-of-the-art; and
 - (B) a specific time limit is imposed by the Executive Officer or designee, in no case exceeding two years.
- (3) Essential Public Service
Is used to provide essential public service, provided the applicant:
 - (A) has provided all required offsets available by modifying sources to Best Available Retrofit Control Technology (BARCT) levels at the same facility; or
 - (B) demonstrates to the satisfaction of the Executive Officer or designee that the applicant owns or operates no sources within the facility which could be modified to BARCT levels to provide offsets.

For equipment not subject to any Regulation XI rule, application(s) for modifications providing offsets to satisfy subparagraph (A) of this section shall accompany the application(s) for the new source(s). For purposes of this section only, BARCT, as defined in the California Health and Safety Code Section 40406, shall not exceed any applicable District BACT cost guidelines and shall be determined as of the date that the application is deemed complete.

- (4) Electrical Generating Facility (EGF)
(A) Is a facility that generates electricity for its own use and is less than 10 Megawatts (MW); or is a facility less than 50 MW that generates not less than 30% of its electricity to pump water to maintain the integrity of the surface elevation of a municipality or significant portion thereof; or

is a thermal power plant less than 50 MW that generates electricity during peak demand periods and operates less than 3000 hours per year; or is a thermal power plant facility that generates 50 MW or greater of electricity for distribution in the state or municipality owned grid system (net generator); such facility having submitted a complete application for certification to the State Energy Resources Conservation and Development Commission (California Energy Commission or CEC) or District permit to construct application during calendar years 2000 through 2003, or 2005 through 2008 or permit to construct application during calendar years 2000, 2001, 2002, or 2003 and which applications are directly related to the production of electricity, such that for projects submitting applications in 2005 through 2008, the electric generation unit or power plant site and related facility will be the subject of an environmental impact report, negative declaration, or other document prepared pursuant to a certified regulatory program; and in accordance with Public Resources Code Section 21080 (b)(6).and provided the facility:

(AB) Applicable Version of the Rule:

- (i) For the purpose of qualifying as an EGF, the applicable version of this rule is the version in effect at the time the application is deemed complete. In case the September 8, 2006 version of this rule is determined to be invalid by a court of law, the July 13, 2007 version would be applicable; and
- (ii) For the purpose of determining accessibility of the EGF to the Priority Reserve credits and determining the applicable mitigation fees, the applicable version of this rule is the version in effect at the time the final Permit to Construct is being issued. In case the September 8, 2006 version of this rule is determined to be invalid by a court of law, the July 13, 2007 version would be applicable.~~meets BARCT for pollutants received from the Priority Reserve for all existing sources prior to the operation of the new source(s) or at a schedule approved by the Executive Officer and no later than 3 years following the issuance of a permit to~~

~~construct the new source(s); and all sources under common ownership within the District are in compliance with all applicable District rules, variances, orders, and settlement agreements; and~~

(5) In-District and Downwind Air Basin Electric Generating Facilities (EGFs)

- (A) (i) An In-District EGF is an EGF located within the jurisdiction of the South Coast Air Quality Management District and may be qualified to draw only SO_x, PM₁₀ and CO credits provided it complies with all applicable requirements of this rule, including the specific provisions applicable to the geographic zone and the Environmental Justice Area (EJA) that the EGF is located in. Zones 1, 2, and 3, as shown in Figure 1, are defined as the areas located within the District with an average PM_{2.5} concentration for years 2003 through 2005 of less than 18µg/m³; between 18µg/m³ and 20µg/m³ and more than 20µg/m³ respectively. Zones are determined based on the procedures described in the District's Guidance Document for Rule 1309.1 PM_{2.5} Concentration and Zoning Determinations. The EJA is defined as the area of grid cells where at least 10% of the population is living in poverty (based on 2000 Federal census data); and either the cancer risk is greater than one thousand in one million (as determined by the SCAQMD Multiple Air Toxics Exposure Study (MATES II); or the PM₁₀ exposure is greater than 46µg/m³ (as determined by the SCAQMD monitoring). The EJA is shown in Figure 2.
- (ii) An In-District EGF located in Zone 2 or an In-District EGF with a maximum capacity of 500 MW, or less, located in Zone 3 or EJA shall demonstrate all of the following in order to draw credits from the

Priority Reserve:

- (a) The cancer risk from the EGF is less than one in one million; and
 - (b) The non-cancer risk (acute and chronic) Hazard Index from the EGF is less than 0.5; and
 - (c) The cancer burden from EGF is less than 0.1; and
 - (d) The rate of PM10 emissions does not exceed 0.06 lb/MW-hr; and
 - (e) The rate of NOx emissions does not exceed 0.08 lb/MW-hr; and
 - (f) The applicant substantiates with modeling that the 24-hour impact of the total combined PM10 emissions from the new or modified electrical generating units shall not exceed 5 $\mu\text{g}/\text{m}^3$; and
 - (g) The applicant substantiates with modeling that the annual impact of the total combined PM10 emissions from the new or modified electrical generating units shall not exceed 0.75 $\mu\text{g}/\text{m}^3$; and
 - (h) For simple cycle electric generating units, the unit shall operate a maximum of 4000 hours per year or less.
- (iii) An In-District EGF located in Zone 3 or in EJA with a maximum capacity of more than 500 MW shall demonstrate all of the following in order to draw credits from the Priority Reserve:
- (a) The cancer risk from the EGF is less than 0.5 in one million; and
 - (b) The non-cancer risk (acute and chronic) Hazard Index from the EGF is less than 0.1; and
 - (c) The cancer burden from EGF is less than 0.05; and
 - (d) The rate of PM10 emissions does not exceed 0.03 lb/MW-hr; and
 - (e) The rate of NOx emissions does not exceed 0.05 lb/MW-hr; and
 - (f) The total combined PM10 hourly emissions does not exceed 30 lbs/hour; and

- (g) The applicant substantiates with modeling that the 24-hour impact of total combined PM10 emissions from the new or modified electrical generating units shall not exceed 2.5 $\mu\text{g}/\text{m}^3$; and
 - (h) The applicant substantiates with modeling that the annual impact of total combined PM10 emissions from the new or modified electrical generating units shall not exceed 0.5 $\mu\text{g}/\text{m}^3$; and
 - (i) For simple cycle electric generating units, the unit shall operate a maximum of 3000 hours per year or less.
- (B) A Downwind Air Basin EGF is an EGF located in a downwind air basin outside the District and may be qualified to draw only VOC credits provided:
- (i) All the applicable requirements of H&S Code 40709.6 are met; and
 - (ii) The applicant pays a mitigation fee pursuant to subdivision (g); and
 - (iii) The applicant certifies the application for a permit to construct has been deemed complete by the downwind district; and
 - (iv) Notwithstanding Rule 1303(b)(2)(A), the applicant for a Downwind Air Basin EGF shall obtain credits at an offset ratio and inter-pollutant trade rates, if applicable, determined by the downwind air district; and
 - (v) The cumulative amount of VOC credits issued to all Downwind Air Basin EGFs pursuant to this paragraph does not exceed 5,000 pounds per day; and
 - (vi) The Executive Officer receives the written request for credits to be drawn before January 1, 2009; and
 - (vii) The California Energy Commission application was submitted during calendar year 2005, 2006, 2007 or 2008; and

(viii) The applicant conducts a due diligence effort [based on an Emission Reduction Credit (ERC) cost not to exceed the applicable mitigation fee for that pollutant at the location of the EGF and as specified in sub-division (g)] approved by the Executive Officer to secure available ERCs for requested Priority Reserve pollutants. Such efforts shall include securing available ERCs including those available through state emission banks or creating ERCs through SIP approved credit generation programs as available.

(c) Requirements for an In-District Electrical Generating Facility (EGF)

An In-District EGF shall not be qualified to draw credits from the Priority Reserve unless it meets all applicable conditions of this rule including:

- (1) The owner or operator agrees to a permit condition requiring the facility to meet BARCT for pollutants received from the Priority Reserve for all existing sources located in the District prior to the operation of the new source(s) or at a schedule approved by the Executive Officer and no later than 3 years following the issuance of a permit to construct the new source(s); and all sources under common ownership within the District are in compliance with all applicable District rules, variances, orders, and settlement agreements; and
- (2) The applicant pays a mitigation fee pursuant to sub-division (g); and
- (3) The applicant conducts a due diligence effort [based on an ERC cost not to exceed the applicable mitigation fee for that pollutant at the location of the EGF and as specified in sub-division (g)] approved by the Executive Officer to secure available ERCs for requested Priority Reserve pollutants. Such efforts shall include securing available ERCs including those available through state emission banks or creating ERCs through SIP approved credit generation programs as available; and
- (4) Enters into a long-term (at least one year) contract with the State of California to sell at least 50% of the portion of the power which it has generated using the Priority Reserve credits and provided the Executive Officer determines at the time of permitting, and based on consultation with State power agencies, that the State of California is entering into such long-term contracts and that a need for such contract exists at the time of

permitting, if the facility is a net generator (this paragraph does not apply to municipal utilities or joint power authorities); and

(5) Notwithstanding Rule 1303(b)(2)(A), the applicant for an In-District EGF that files a complete application for which credits are sought in calendar year 2005, 2006, 2007, or 2008 demonstrates to the satisfaction of the Executive Officer both of the following:

(A) That the proposed purchase of credits from the Priority Reserve together with credits otherwise obtained, is at an offset ratio of 1.2 to 1.0, and

(B) That renewable/alternative energy (for the purpose of this rule, renewable/alternative energy is hydropower, wind and wave power, solar and geothermal energy, and fossil fuel-based energy provided the emissions are no more than those from a fuel cell) in lieu of natural gas fired EGF is not a viable option for the power to be generated at that site; and

(6) The Permit to Construct applicant agrees to a permit condition requiring the new source(s) to be fully and legally operational at the rated capacity within 3 years of issuance of the Permit to Construct. An applicant that is a municipality may have an additional year if the EGF includes a renewable energy component with a capacity of at least 50 MW of renewable/alternative energy. The Governing Board may grant additional time extensions based upon a demonstration by the applicant that the extension is necessary due to circumstances beyond the reasonable control of the applicant. This paragraph does not affect the applicability of District Rule 205.

(d) The following provisions shall apply to the Priority Reserve:

(1) Access to Priority Reserve credits, except for Downwind Air Basin EGFs, for specific priority sources pursuant to sub-division (b) shall be prioritized based on the earliest date that an application is approved for final Permit to Construct.

(2) Prioritization for a Downwind Air Basin EGF shall be based on the earliest date a written request is received by the Executive Officer pursuant to sub-paragraph (b)(5)(B).

(3) The District Governing Board may determine that a specific project shall be given priority for access to the Priority Reserve based on

public health or safety regardless of the date of application submittal.

- (4) Essential Public Services may, at the discretion of the Executive Officer or designee, reserve Priority Reserve offsets for up to three years to allow multi-year projects to be planned. The sum of such reservations shall amount to no more than 25 percent of the Priority Reserve allocations for those three years.
- (5) Each facility shall maintain a balance of total Priority Reserve credits obtained.
- (6) If a subject facility holds an ERC, then that ERC must be used before access to the Priority Reserve is allowed for that pollutant.
- (7) Allocations from the Priority Reserve shall not be banked or transferred.
- (8) An aggregate total of 400 pounds per day of PM10 shall be exclusively reserved for use by essential services for calendar years 2001, 2002, and 2003.
- (9) Offset credits obtained from the Priority Reserve by an EGF may not exceed the allowable emissions level of the newly permitted unit(s) after the application of appropriate offset ratios.
- (10) The Executive Officer shall monitor the PM10 balance in the Priority Reserve and in the event the balance is less than 500 pounds per day the Executive Officer may transfer up to 1,500 pounds per day of PM10 to the Priority Reserve. This transfer shall be done in a public meeting.
- (11) Offset credits obtained from the Priority Reserve and used in the District may not be used for inter-pollutant trading.

(B) — pays a non-refundable mitigation fee of the following amounts for each pound per day of each pollutant obtained from the Priority Reserve:

PM-10	\$25,000
SO _x	\$8,900
CO	\$12,000 ; and

(C) — conducts a due diligence effort (limited to costs not to exceed the mitigation fee for that pollutant) approved by the Executive Officer or designee to secure available ERCs for requested Priority

~~Reserve pollutants. Such efforts shall include securing available ERCs including those available through state emissions banks or creating ERCs through SIP approved credit generation programs as available; and~~

~~(D) has the new source(s) fully and legally operational at the rated capacity within 3 years following issuance of a Permit to Construct or California Energy Commission certification, whichever is later, subject to an extension by the Executive Officer consistent with SCAQMD Rule 205; and~~

~~(E) enters into long term (at least one year) contract with the State of California to sell at least 50% of the portion of the power which it has generated using the Priority Reserve credits and provided the Executive Officer determines at the time of permitting, and based on consultation with State power agencies, that the state of California is entering into such long term contracts and that a need for such contracts exists at the time of permitting, if the facility is a net generator (this subsection does not apply to municipal utilities or joint power authorities).~~

~~(5) The following provisions shall apply to the Priority Reserve:~~

~~(A) Access to Priority Reserve Credits, except for those exclusively reserved for EGFs, shall be prioritized based on qualifying as an Essential Public Service or EGF and then, on the earliest date that an application is deemed complete.~~

~~(B) Each facility shall maintain a balance of total Priority Reserve Credits obtained.~~

~~(C) Essential Public Services may, at the discretion of the Executive Officer or designee, reserve Priority Reserve Offsets for up to three years to allow multiyear projects to be planned. The sum of such reservations shall amount to no more than 25 percent of the Priority Reserve allocation for those three years.~~

~~(D) The AQMD Governing Board may determine that a specific project shall be given priority for access to the priority reserve based on public health or safety regardless of date of application submitted.~~

~~(E) If a subject facility holds an Emission Reduction Credit (ERC),~~

~~then that ERC must be used before access to the Priority Reserve is allowed.~~

~~(F) Allocations from the Priority Reserve shall not be banked or transferred.~~

~~(G) An aggregate total of 400 pounds per day for PM 10 shall be exclusively reserved for use by essential public services for calendar years 2001, 2002, and 2003.~~

~~(H) Offset credits obtained from the Priority Reserve by an EGF may not exceed the allowable emissions level of the newly permitted unit(s).~~

~~(I) The total amount of SOx and CO credits that may be issued by the Executive Officer to EGFs from the Priority Reserve shall not exceed 750 lbs/day of SOx and 6,000 lbs/day of CO.~~

~~(J) The Executive Officer shall monitor the PM 10 balance in the Priority Reserve and in the event the balance is less than 500 pounds per day the Executive Officer may transfer up to 1,500 pounds per day of PM 10 to the Priority Reserve. This transfer shall be done at a public meeting.~~

(be) Suspension of Health & Safety Code Section 42314.3

Pursuant to subsection (i) of Section 42314.3 of the Health & Safety Code, the District Board hereby suspends the applicability of Section 42314.3, since it determines that this rule makes adequate offsets available at a reasonable price to EGFs.

(ef) Additional Requirements for Net Generators Accessing Priority Reserve Credits

Any net generator accessing Priority Reserve Credits shall comply with all terms and conditions in any Executive Officer order, whether expired or not, relating to the generator's access of Priority Reserve credits, whether such credits are used or not.

(g) Mitigation Fees for Electrical Generating Facilities

(1) Applicants shall pay a mitigation fee of the following amounts for each pound per day of each pollutant obtained from the Priority Reserve:

(A) An EGF, as defined on May 3, 2002, where a complete initial application for certification to the CEC or a complete application

for a permit to construct was filed in calendar year 2000, 2001, 2002 or 2003:

<u>PM10</u>	<u>\$25,000</u>
<u>SOx</u>	<u>\$ 8,900</u>
<u>CO</u>	<u>\$12,000</u>

(B) An In-District EGF located in Zone 1 and not in an EJA where a complete initial application for certification to the CEC or a complete application for a permit to construct was filed in calendar year 2005, 2006, 2007 or 2008:

<u>PM10</u>	<u>\$50,417</u>
<u>SOx</u>	<u>\$15,083</u>
<u>CO</u>	<u>\$12,000</u>

(C) An In-District EGF located in Zone 2 and not in an EJA where a complete initial application for certification to the CEC or a complete application for a permit to construct was filed in calendar year 2005, 2006, 2007 or 2008:

<u>PM10</u>	<u>\$75,626</u>
<u>SOx</u>	<u>\$22,625</u>
<u>CO</u>	<u>\$18,000</u>

(D) An In-District EGF located in either Zone 3 or an EJA where a complete initial application for certification to the CEC or a complete application for a permit to construct was filed in calendar year 2005, 2006, 2007, or 2008:

<u>PM10</u>	<u>\$100,834</u>
<u>SOx</u>	<u>\$30,166</u>
<u>CO</u>	<u>\$24,000</u>

(E) A Downwind Air Basin EGF:

<u>VOC</u>	<u>\$1,410</u>
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(2) The fee amounts in sub-paragraphs (g)(1) shall be adjusted each year on July 1 by the change in the California Consumer Price Index for the previous calendar year. The Executive Officer shall be allowed to use up to 10 percent of the mitigation fees collected in any one year for program administration.

(h) Mitigation Fee Refund

- (1) A refund of paid mitigation fees less 20 percent or \$2,000,000, whichever is less, shall be allowed only for In-District EGFs that filed complete applications for which credits are sought in year 2005, 2006, 2007 or 2008 provided the applicant submits a written request to the Executive Officer stating the reasons and provided:

 - (A) The project requiring credits was cancelled within twelve months of purchase of the Priority Reserve credits due to circumstances that the Executive Officer determines is beyond the reasonable control of the applicant; and
 - (B) A written request to the Executive Officer justifying the refund is received no more than 30 days after the project cancellation. The Executive Officer shall return the excess credits to the District's NSR account.
- (2) A refund of paid mitigation fees shall be allowed for In-District EGFs that filed complete applications during year 2001, 2002, or 2003, subject to the following requirements:

 - (A) A permit to construct was issued and credits were purchased based on original estimated emissions rates.
 - (B) A subsequent, revised Permit to Construct was issued to reflect lower emission rates prior to completion of construction and start of operation of the project.
 - (C) The revised lower emission rates have been verified by source testing and the results are approved by the District.
 - (D) A written request for a refund is submitted within 3 months after the source testing.
 - (E) The amount of the refund calculated is the difference between the original and revised Permit to Construct mass emission limits and shall be reduced by:

 - (i) Any legal costs incurred by the District in defending the issuance of the original or revised permits for the project; and
 - (ii) Any administrative costs incurred by the District in administering the mitigation fee; and-
 - (iii) Any mitigation fees encumbered or expended for air quality improvement projects.

FIGURE 1 - Three – Year Average (2003 – 2005) PM_{2.5} Concentration Zones in SCAQMD

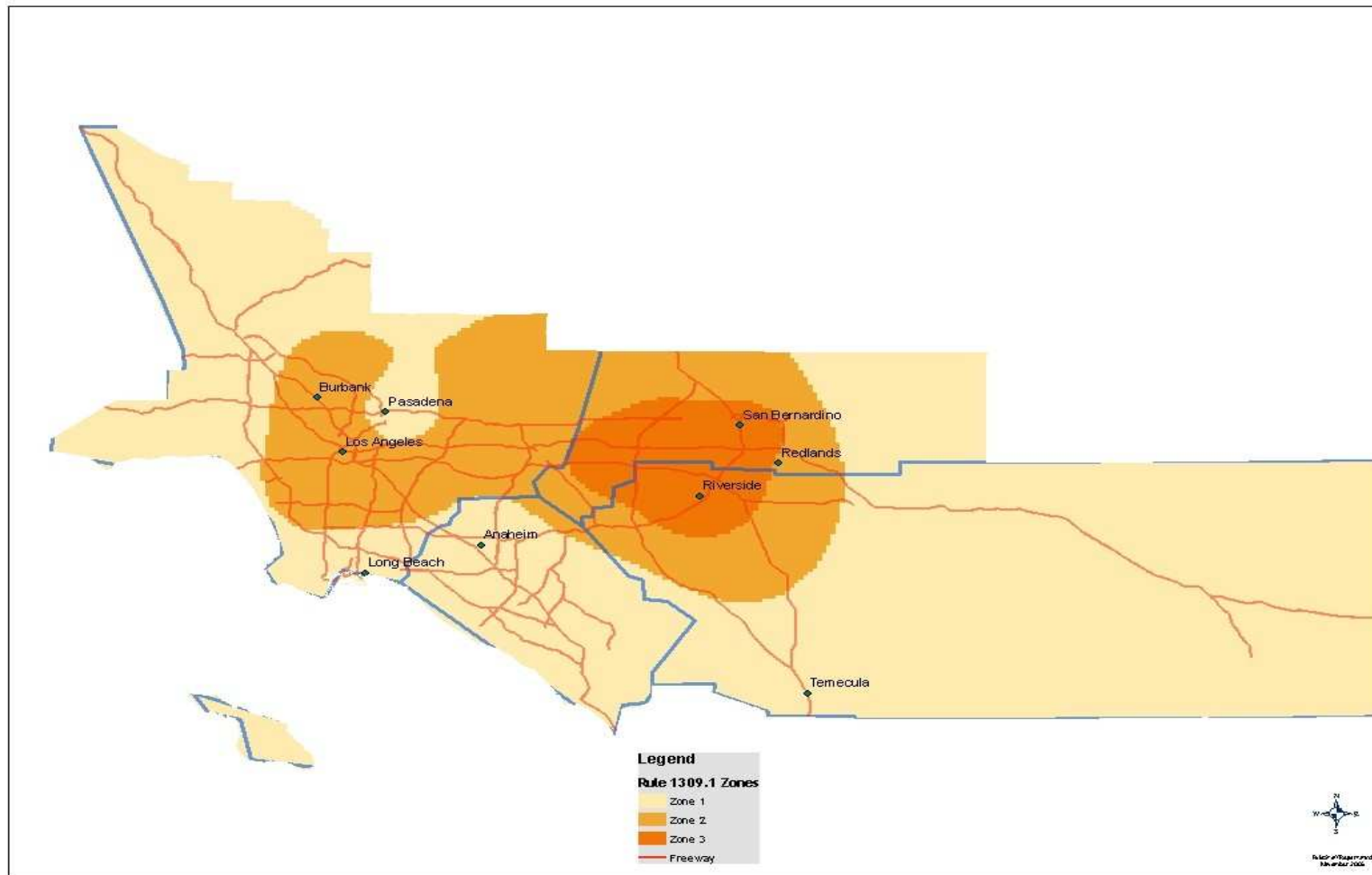


FIGURE 2 - Environmental Justice Areas in the SCAQMD

